

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

FILED

JUN 20 2016

Clerk, U.S. District Court
District of Montana
Missoula

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

vs.

SHANE DOUGLAS HOSKINS,

Defendant/Movant.

Cause No. CR 04-35-M-DWM
CV 16-84-M-DWM

ORDER DISMISSING § 2255
MOTION AND DENYING
CERTIFICATE OF APPEALABILITY

This matter comes before the Court on Defendant/Movant Hoskins' motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255. Hoskins seeks relief under *Johnson v. United States*, __ U.S. __, 135 S. Ct. 2551 (2015).

Hoskins has already litigated to conclusion one motion under 28 U.S.C. § 2255. *See* Minutes (Doc. 337); Order (Doc. 339); Order (Doc. 352). This Court lacks jurisdiction to consider the instant unauthorized motion under 28 U.S.C. § 2255. *Burton v. Stewart*, 549 U.S. 147, 149 (2007) (per curiam).

Hoskins timely filed an application in the Court of Appeals seeking leave to file a second or successive motion in this Court. *See Hoskins v. United States*, No. 16-72049 (9th Cir. filed June 23, 2016). Therefore, it is not necessary to transfer the motion to the Court of Appeals. 28 U.S.C. § 1631.

A certificate of appealability is not warranted. *Burton* is plainly controlling.

Further, Hoskins' timely filing in the Court of Appeals means he will not be prejudiced by dismissal of his motion in this Court. *See Orona v. United States*, No. 16-70568, slip op. at 3 (9th Cir. June 22, 2016).


Accordingly, IT IS HEREBY ORDERED as follows:

1. Hoskins' motion under 28 U.S.C. § 2255 (Doc. 418) is DISMISSED for lack of jurisdiction.

2. A certificate of appealability is DENIED. The Clerk shall immediately process the appeal if Hoskins files a notice of appeal.

3. The clerk shall ensure that all pending motions in this matter and in CV 16-84-M-DWM are terminated and shall close the civil file by entering a judgment of dismissal.

DATED this 28th day of June, 2016.



Donald W. Molloy
United States District Court